IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6244 OF 2005
IN
CRIMINAL APPEAL NO. OF 2005

The State of Maharashtra .... Applicant.

V/s

Salim Kasamali Jetha & Anr. .... Respondents.

Mr. Y.S. Shinde, APP for the applicant.

Mr. K.R. Iyengar for Respondent Nos. 1 and 2.

CORAM: V.M. KANADE, J.
DATE : 29th August, 2007

P.C.:

1. Heard Mr. Shinde, the learned APP appearing on behalf of the State and Mr. Iyengar, the learned Counsel appearing on behalf of Respondent Nos. 1 and 2.

2. Applicant - State has filed this application for leave to file an appeal against acquittal being aggrieved by the judgment and order passed by the Additional Chief Metropolitan Magistrate dated 05/02/2005 whereby the learned Magistrate was pleased to acquit the original accused Nos. 1 and 2 of the offences punishable under sections 454, 457, 381 read with section 34 of the Indian Penal Code.

3. The prosecution case in brief is that the complainant was working as Branch Manager in Development Credit Bank and Respondent Nos. 1 and 2 i.e. original accused Nos. 1 and 2 were working in the same Bank as Assistant Branch Manager and Cashier respectively at the Nariman Point Branch. The prosecution case is that keys of the Bank's Vault were in possession of Branch Manager and the Cashier - Respondent No.2 herein and only with the assistance of these two keys, the Bank's Vault could be opened. It is their case that on 1/12/1995, the Branch Manager had to leave the Bank early and, therefore, he handed over his key of the Bank's Vault to accused No.1 and, at the time of closing of the Bank, the Bank's Vault was closed by accused Nos. 1 and 2 i.e. the Assistant Branch Manager and the Cashier. On the next day, when the Safe was opened, it was noticed that cash of Rs 8 lakhs was missing from the Safe and, therefore, a complaint was lodged at Cuff Parade Police Station by the Branch Manager. The Investigating Officer, after recording FIR, arrested the accused Nos. 1 and 2 and, thereafter, statements of other witnesses were recorded and charge-sheet was filed. The prosecution examined in all 8 witnesses. The Trial Court, after appreciating the evidence on record, held that the case of the prosecution was not established against the accused and, therefore, had acquitted the accused.

4. Mr. Shinde, the learned APP appearing on behalf of the applicant - State, invited my attention to the evidence of P.W. 1 - complainant. He submitted that the evidence of the said Branch Manager conclusively established that both keys of the locker were

with original accused Nos. 1 and 2 and they alone were persons who were entrusted with the safe custody of the Locker and that they were the last persons who had closed the Locker. He submitted that the complainant, in his evidence, had produced a Register of keys which also established that keys were in possession of Respondent Nos. 1 and 2. He submitted that so far as other witnesses are concerned, they were not direct witnesses but were panchas and other staff members working in the Branch and that their evidence was not directly concerned in establishing commission of the offence. He invited my attention to the evidence of Investigating Officer who has stated the steps which have been taken by him while investigating the case. He invited my attention to the finding recorded by the learned Magistrate wherein the Magistrate has observed that, admittedly, the Safe Deposit Vault was not forcibly opened. He submitted that, on this basis, the Trial Court had come to the conclusion that Respondent Nos. 1 and 2 could not be fastened with the criminal liability. He submitted that the said finding is patently perverse and, therefore, it was liable to be set aside.

5. Mr. Iyengar, the learned Counsel appearing on behalf of Respondent Nos. 1 and 2, on the other hand, took me through the evidence of other witnesses as also cross-examination of P.W.1 wherein several suggestions were made and some of them were admitted by the Branch Manager. He submitted that it was brought on record that duplicate keys in respect of the said Vault were kept in the Head Officer which was located at a distance of about 5 to 10 minutes from the said Bank. He submitted that it was also brought on

record that a duplicate key was prepared of the said Vault recently and that whereabout of the said key was not brought on record. He submitted that nothing was brought on record to establish that the Bank's Vault was secured by any Security Guards. He submitted that in the absence of this evidence, it was not possible to fasten the liability on accused Nos. 1 and 2 who were working as Assistant Branch Manager and Cashier respectively.

6. I have given my anxious consideration to the submissions made by the learned APP appearing on behalf of the State and the learned Counsel appearing on behalf of Respondent Nos. 1 and 2. A separate paper-book has been filed by the advocate for Respondent Nos. 1 and 2. I have perused the judgment and order passed by the learned Magistrate. It is a well settled position in law that this Court, while exercising its jurisdiction under section 378 of the Criminal Procedure Code, is not supposed to take a different view if two views are possible and substitute its own view to the view which is taken by the Trial Court. The submission made by the learned APP appearing on behalf of the State that the finding recorded by the Trial Court is perverse, cannot be accepted. The Trial Court has given cogent reasons before recording a finding that the prosecution had not established beyond the reasonable doubt that Respondent Nos. 1 and 2 had committed the said offence. After having perused the evidence of P.W. 1 - complainant which is the only relevant evidence, it cannot be said that the prosecution has established beyond the reasonable doubt that Respondent Nos. 1 and 2 had committed the said offence. It is no doubt true that P.W.1 has stated in his evidence that accused

Nos. 1 and 2 had the keys of the said Locker and that they had closed the Vault on the earlier date. However, it has also brought on record that a duplicate key had been prepared and no particulars have been mentioned about the place where this duplicate key was kept. Apart from that, it has also come on record that there were two other duplicate keys which were kept at the Head Office which was practically in the near vicinity of the said Bank. The prosecution also has not established that the said Bank was under the scrutiny of Security Officers during its non-working hours. In the absence of this material, it cannot be said that respondent Nos. 1 and 2 alone could be held liable for the cash which was missing from the Vault.

7. In my view, therefore, this is not a fit case for interfering with the judgment and order passed by the Trial Court. Though the matter was not admitted, appeal has been heard finally at the stage of admission after perusing the judgment and order of the Trial Court as also the evidence on record. Hence leave to file appeal is rejected. Application is dismissed.

(V.M. KANADE, J.)